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Field Dennis

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~376~~. 969

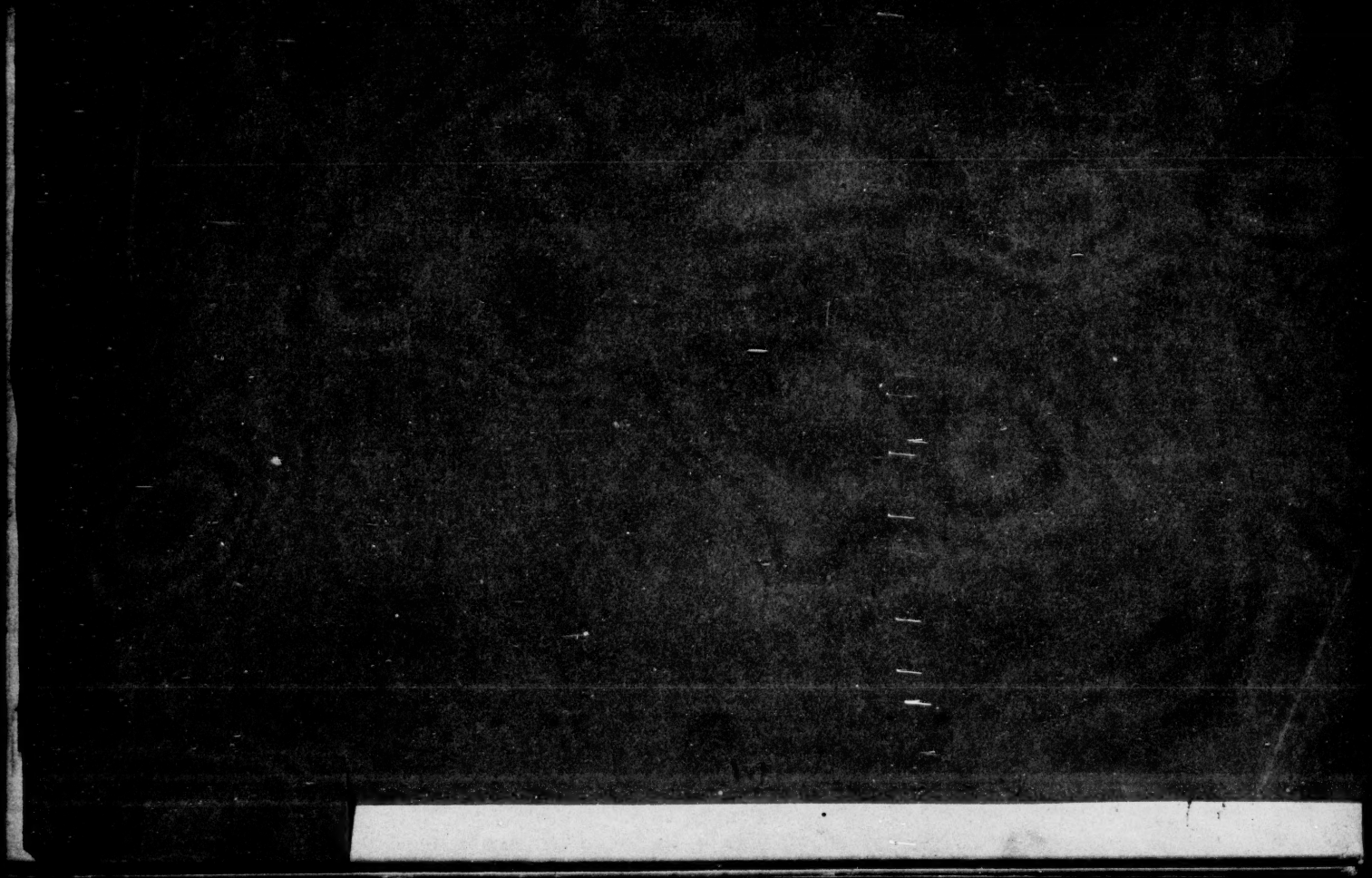
THE WILMINGTON AND WELDON RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

HENRY KING, EXECUTOR OF HARDY KING, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED DECEMBER 19, 1872.



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1 UNITED STATES OF AMERICA:

The President of the United States to the honorables the judges of the supreme court of the State of North Carolina, greeting:

Because the record and proceedings, and also in the rendition of the judgment, of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit, between Henry King, deceased, and the Wilmington and Weldon Railroad Company, wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, a manifest error hath happened, to the great damage of the Wilmington and Weldon Railroad Company, as by its complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Su-
2 preme Court of the United States, together with this writ, so that you may have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 9th day of March, in the year of our Lord one thousand eight hundred and seventy-two.

N. J. RIDDICK, *Clerk.*

Issued 9th March, 1872.

STATE OF NORTH CAROLINA:

The above writ of error allowed by me.

R. M. PEARSON,
Chief Justice of the Supreme Court of the State of North Carolina.

(Indorsed:) Filed March 9th, 1872. W. H. Bagley, cl'k.

3 UNITED STATES OF AMERICA, *ss:*

To Henry King, executor of Hardy King, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of North Carolina, wherein the Wilmington and Weldon Railroad Company is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Richmond M. Pearson, chief justice of the

said supreme court of North Carolina, this day of , in the year of our Lord eighteen hundred and seventy-two.

R. M. PEARSON,
Chief Justice Supreme Court North Carolina.

Service admitted.

GEORGE V. STRONG,
Attorney for Henry King, Ex'r.

3½ STATE OF NORTH CAROLINA:

HENRY KING, EXECUTOR OF HARDY KING, dec'd,
against
THE WILMINGTON AND WELDON RAILROAD Company.

Know all men by these presents, that the Wilmington and Weldon Railroad Company, as principal, and John G. Williams, a citizen of North Carolina, as surety, are firmly bound unto Henry King, executor of Hardy King, deceased, a citizen of North Carolina, defendant in the above-entitled case, in the sum of two thousand dollars, to be paid to the said Henry King, his executors and administrators; to which payment, well and truly to be made, they bind themselves jointly and severally firmly by these presents.

The condition of the above obligation is such that whereas the above-named Wilmington and Weldon Railroad Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of North Carolina, at the term of said last-mentioned court held on the first Monday of January, A. D. 1872: Now, therefore, if the said the Wilmington and Weldon Railroad Company shall prosecute the
4 said writ of error with effect, and answer all damages and costs which may be adjudged against the said company upon its failure so to do, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

In testimony whereof the said the Wilmington and Weldon Railroad Company hath, by B. F. Moon, its agent duly appointed and authorized for that purpose, executed this bond, and the said John G. Williams, the other obligor, has hereunto subscribed his name and set his private seal this 9th day of March, 1872.

Wilmington & Weldon Railroad Company—
By B. F. MOON, [SEAL.]
Attorney authorized under seal of said company.
JNO. G. WILLIAMS. [SEAL.]

Witness: W. H. BAGLEY.

The foregoing bond is approved. The clerk will issue a transcript of the record by the accompanying writ of error.

R. M. PEARSON,
Chief Justice of Supreme Court N. C.

5 On the 14th day of November, 1870, Henry King, executor of Hardy King, deceased, sued out of the superior court of Wilson County, North Carolina, a summons in the following words:

Summons.

In the superior court.

NORTH CAROLINA, *Wilson County:*

HENRY KING, EXECUTOR,
against
THE WILMINGTON & WELDON RAILROAD COMPANY.

To the sheriff of New Hanover County, greeting:

You are hereby commanded to summon the Wilmington & Weldon Railroad Company, the defendant above named, if to be found within your county, to appear before the judge of the superior court for the county of Wilson, at the court to be held for the said county, at the court-house in Wilson, on the eleventh Monday after the fourth Monday of September, 1870, and answer the complaint of the plaintiff, a copy of which is deposited in the office of the clerk of said court. And let them take notice that if they fail to answer the complaint at that time, the plaintiff will apply to the court for the relief demanded in the
6 complaint.

Herein fail not, and of this summons make due return.

Given under my hand and the seal of said court this 14th day of November, 1870.

SEAL OF WILSON COUNTY SUPERIOR COURT.

A. BARNES,
Clerk of Superior Court, Wilson County.

And the said summons having been returned by J. W. Schenck, junior, sheriff of the said county of New Hanover, with the indorsement that he had executed the same by leaving a copy thereof with J. W. Thompson, the treasurer of said railroad company, the said Henry King, executor, thereupon, to wit, on the eleventh Monday after the fourth Monday of September, 1870, at the court-house in Wilson, before the honorable William J. Clarke, judge of said superior court, filed his complaint in the following words, to wit:

In the superior court, of fall term, 1870.

NORTH CAROLINA, *Wilson County:*

HENRY KING, EXECUTOR OF HARDY KING, DECEASED,
against
THE WILMINGTON & WELDON RAILROAD COMPANY.

7 The plaintiff complains and alleges:

I. That on the 18th of July, 1864, the defendant purchased of Hardy King five hundred and eighty-three and one-half cords of wood; and subsequently, on the 1st day of February, 1865, the defendants purchased of said Hardy King four hundred and twenty-two and one-half cords of wood, for which they agreed to pay one dollar per cord.

II. That the said Hardy King, in her lifetime, made and published her last will, whereby she appointed the plaintiff executor thereof.

III. That, on the day of , 1865, the said Hardy King died.

IV. That, on the 25th day of November, 1865, letters testamentary were duly issued on the said will to the plaintiff, by the court of pleas and quarter sessions of Edgecombe County.

V. That no part of the same has been paid.

Wherefore the plaintiff demands judgment against the defendant for the sum of five hundred and eighty-three dollars and fifty cents, with interest thereon from the 18th day of July, 1864; also for the sum of four hundred and twenty-two dollars and fifty cents, with interest thereon from the 1st of February, 1865.

J. S. WOODWARD,
Pl'ff's Attorney.

8 Henry King, the plaintiff above named, being duly sworn, says that the foregoing complaint is true to his own knowledge, except the matters therein stated on information and belief, and as to those matters he believes them to be true.

H. KING.

Sworn to before me May 16th, 1870.

A. BARNES, *C. S. C.*

And thereupon the said the Wilmington and Weldon Railroad Company, by its attorney, William T. Dutch, filed its answer in the following words:

Answer.

In the superior court, of fall term, 1870.

NORTH CAROLINA, *Wilson County:*

HENRY KING, EXECUTOR OF HARDY KING, deceased,
against
THE WILMINGTON AND WELDON RAILROAD Company.

The defendant, answering the complaint herein, says:

I. That all the statements made in the complaint are admitted to be true.

II. The defendant further saith that the said contracts for wood were expressly agreed to be paid in confederate currency; and consequently the defendant insists that the amount agreed to be paid is subject to be scaled to the value of the said currency at the time.

9 III. The defendant further saith that said wood was cut by defendant's hands, and that plaintiff's testatrix only furnished the trees standing near the defendant's road.

Wherefore the defendant demands payment of costs, &c.

W. T. DUTCH,
Attorney for Defendant.

Thereupon and afterwards, to wit, on the eleventh Monday after the

fourth Monday in February, 1871, at the said court-house in Wilson, before the honorable Samuel W. Watts, judge of the said superior court, the parties aforesaid, by their said attorneys, came, and thereupon the following jurors, to wit, Hardy Bumiss, Perry Lucas, Jack Ellis, Jordan Winstead, John S. Boykin, W. W. Farmer, Ashley Page, William Mattocks, W. H. Winstead, Robert Gardner, S. M. Hamell, and R. W. Hines, being chosen, sworn, and tried, to try the issues aforesaid, say that they find all issues in favor of the plaintiff, and assess his damage at five hundred and three dollars; the judgement was rendered accordingly, and for all costs.

From this judgment the defendant, the Wilmington and Weldon Railroad, prayed and obtained an appeal to the supreme court of North Carolina, upon entering into bond in the sum of five hundred dollars, with W. T. Dutch and George Howard as sureties, which said
10 bond was duly executed and filed in the proper court.

Statement of the case.

HENRY KING, EXECUTOR, PLAINTIFF,
against
THE WILMINGTON AND WELDON RAILROAD Company, defendant.

On the 18th day of July, 1864, the defendant purchased of the plaintiff's testatrix five hundred and eighty-three cords of wood, and on the first day of February, 1865, it also purchased of her four hundred and twenty-two cords at the price of one dollar, and it was agreed between the parties, at the time of making the contract, that the price of the wood should be paid in confederate money, which at that time was the universal and only currency in common use, and which, compared with gold and silver coin on the 18th of July, 1864, was of the proportionate value of twenty-one dollars of said currency to one dollar of specie, and on the 1st day of February, 1865, of fifty dollars of said currency to one dollar of specie.

On the trial in the superior court the defendant insisted, and asked the court to instruct the jury, that the plaintiff was entitled to
11 recover only the value of the currency at the time of the contract, and not the value of the wood. On the contrary, the plaintiff insisted, and asked the court so to instruct the jury, that he was entitled to recover the actual value of the wood, without reference to the value of the currency. The actual value of the wood, per cord, was found by the jury to be fifty cents, in specie.

The court declined to instruct the jury as requested by the defendant, and instructed and directed the jury to return a verdict for the value of the wood, without reference to the value of the confederate currency at the time of contract.

It is agreed that this instruction to the jury was in conformity with the construction placed by the supreme court of the State upon an ordinance entitled "An ordinance declaring what laws and ordinances are in force, and for other purposes," passed by the North Carolina State convention and ratified the 18th day of October, 1865, which is in the following words:

"SEC. 3. * * * And it shall be the duty of the general assembly to provide a scale of depreciation of the confederate currency from the

time of its first issue to the end of the war; and all executory contracts solvable in money, whether under seal or not, made after the de-
12 preciation of said currency before the first day of May, eighteen hundred and sixty-five, and yet unfulfilled, (except official bonds, and penal bonds payable to the State,) shall be deemed to have been made with the understanding that they were solvable in money of the value of the said currency; it shall be competent for either of the parties to show, by parol or other relevant testimony, what the understanding was in regard to the kind of currency in which the same are solvable; and in such case the true understanding shall regulate the value of the contract: Provided, That in case the plaintiff, in any suit upon such contracts, will make an affidavit that it was solvable in other currency than that above referred to, then such presumption shall cease, and it shall be presumed to be payable in such currency as shall be mentioned in the affidavit, subject to explanation by evidence as aforesaid.

And upon the following acts of the general assembly of the State enacted in pursuance of said ordinance, to wit: An act entitled "An act relating to debts contracted during the late war," ratified the 12th day of March, 1866, which is in the following words:

"Whereas a great many debts which were contracted during the war are yet unsettled, said debts having been incurred for property
13 bought at irregular and extravagant prices, or for money of a depreciated value; and whereas the late State convention made it obligatory on this general assembly to provide a scale of depreciated currency for the settlement of these debts; and whereas this general assembly finds great difficulty in fixing a scale which will secure justice to citizens of all sections of the State; and whereas, in the opinion of this general assembly, no scale which will do justice to all sections of the State can be adopted: Therefore,

"SEC. 1. Be it enacted by the general assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That in all civil actions which may arise in courts of justice for debts contracted during the late war, in which the nature of the obligation is not set forth, nor the value of the property for which such debts were created is stated, it shall be admissible for either party to show on trial, by affidavit or otherwise, what was the consideration of the contract, and the jury in making up their verdict shall take the same into consideration, and determine the value of said contract in present currency, in the particular locality in which it is to be performed, and ren-
14 der their verdict accordingly. * * * * *"

And an act entitled "An act to establish a scale of depreciation of confederate currency," ratified the twelfth day of March, A. D. 1866, by which said last act the scale of depreciation of confederate currency at the dates of the contracts made between the defendant and the plaintiff's testatrix, the gold dollar being the unit and measure of value, was established to be as hereinbefore stated.

The jury rendered their verdict, as instructed, for the value of the wood.

The defendant excepted to the charge of the court—

First, because the court refused the instructions asked for.

Secondly, because the court instructed the jury to return a verdict for the value of the wood.

Judgment was rendered in the superior court upon the verdict of the jury, and the defendant appealed to the supreme, which is the highest

court of law and equity for the State, and the case was heard upon the transcript of the record from the court below, and the judgment of the court below was affirmed, and judgment was rendered accordingly in the supreme court against the defendant for the amount adjudged
15 in the court below and for the costs of suit, as follows:

NORTH CAROLINA:

In the supreme court.

HENRY KING, EXECUTOR OF HARDY KING, dec'd,
against
THE WILMINGTON AND WELDON RAILROAD Company.

This cause coming on for argument, and being argued by counsel on both sides, it is considered by the court that there is no error in the judgment of the superior court of Wilson County, from which the appeal was taken, and it is adjudged by this court that the plaintiff recover of the defendant the sum of five hundred and three dollars, the value of the wood mentioned in the complaint, with interest thereon from the day of May, 1871, and for all costs.

GEORGE V. STRONG,
Atto. for Plaintiff.
MOON & GATLING,
Atto's for Defendant.

Thereupon the defendant obtained the writ of error hereinbefore set forth, and issued and served the following citation, to wit:

UNITED STATES OF AMERICA, *ss:*
To Henry King, executor of Hardy King, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the
16 clerk's office of the supreme court of North Carolina, wherein the Wilmington and Weldon Railroad Company is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment, in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Richmond M. Pearson, chief justice of said supreme court of North Carolina, this day of , in the year of our Lord eighteen hundred and seventy-two.

R. M. PEARSON,
Chief Justice Supreme Court North Carolina.

Service admitted.

GEORGE V. STRONG,
Attorney for Henry King, Executor.

In the supreme court.

NORTH CAROLINA:

I, William H. Bagley, clerk of the supreme court of the State of North Carolina, do hereby certify the foregoing to be a full, true, and correct transcript of the action entitled Henry King, executor of Hardy

King, deceased, against the Wilmington and Weldon Railroad Company, as appears of record in this court.

Given under my hand and seal of office this 4th day of November, 1872.

[SEAL.] W'M H. BAGLEY.

(Indorsement on cover:) No. 376. The Wilmington and Weldon Railroad Company, plaintiff in error, vs. Henry King, ex'o'r of Hardy King, dec'd. N. Carolina sup. court. Filed 19th December, 1872.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THE WILMINGTON AND WELDON R. R. CO.,
PLAINTIFF IN ERROR,

vs.

KING, EXECUTOR.

No. 9.

BRIEF FOR PLAINTIFF IN ERROR.

This cause comes up by writ of error to the Supreme Court of North Carolina under section 709 of the Revised Statutes of the United States.

The Case.

King sued the railroad company in the supreme court of Wilson county, North Carolina, to recover the agreed price for certain cords of wood sold and delivered by the plaintiff to the defendant at the agreed price of one dollar per cord, part of it on the 18th of July, 1864, and part of it on the 1st day of February, 1865. This contract was set out in the declaration which contained only this special count. Rec., p. 3.

The defendant, in his answer, admitted the agreement and the delivery of the wood, but set up in defence that the price agreed was payable in Confederate currency, and insisted that the agreed amount was subject to be scaled to the value of the currency at that time. Rec., p. 4.

At the trial the defendant asked the court to instruct the jury that the plaintiff was entitled only to receive the value of the currency and not of the wood. The plaintiff, on the other hand, asked the court to instruct the jury that the plaintiff was entitled to recover the value of the wood; and the court refused the instruction asked by the defendant, and instructed the jury as prayed by the plaintiff. Rec., p. 5.

This instruction was given under an act of assembly of North Carolina cited below. Statement of Facts, Rec., p. 5.

This statute so construed, impairs the obligation of contracts in this, that whereas the contract was that the defendant might make payment in Confederate money, the statute required the defendant to pay the value of the contract, meaning the article contracted for, *i. e.*, the wood, in present currency.

And the act of assembly thus impaired the obligation of the contract, in violation of Art. 1, sec. 10, of the Constitution of the United States.

On appeal to the supreme court of the State the judgment was affirmed. Rec., p. 7.

Assignment of Error.

The supreme court of North Carolina erred in sustaining the instructions given by the county court, and in thus deciding in favor of the validity of the act of assembly of March 12, 1866.

Argument.

I. Jurisdiction. The record is, if not imperfect, still, not made up in the form with which we are familiar.

But we are instructed by the local counsel who conducted the case in the courts below that the record is sufficient, according to the practice in their State, to present for the decision of their Supreme Court the questions raised

and stated in the "statement of the case," so called. [Rec., p. 5.] And they refer to the code of civil procedure, sec. 301, and to Battle's Revisal, 1873–4, pages 215, sec. 301.

That the validity of the act of assembly was drawn in question does not expressly and clearly appear in the record in this case.

But we respectfully submit that the act was passed with the express purpose on its face of providing a measure of damages in case of breach of contract, and so changing the remedy in case of breach of contract, and the question whether it impaired the obligation of the contract was the one prominent question in the case.

In the supreme court of North Carolina that question had been more or less often decided before this case was heard, and the validity of the act of assembly had been assailed as contrary to the said article of the Constitution of the United States, and as often sustained.

The court could not have given the judgment it did give without sustaining the validity of the act of assembly, and this consideration brings the case within the 6th class of cases said by this Court in 16 Peters, 281, to be within the jurisdiction of this Court, though not within the stricter rules laid down in other cases, with all which this court is so familiar that further reference to them we hope will be unnecessary.

The Merits.

We submit for brief the following careful argument prepared by the counsel in the Supreme Court of North Carolina :

1. The contract, (verbal,) made in July, 1864, was "$1.00 *per cord, to be paid in Confederate money.*" This was the general currency at that time, and its value, compared with coin, at the time of the contract, was, $21 in currency was equal to $1 in coin. Rec., p. 5.

2. Had it been paid on the day after the contract, in

that currency, at par, the contract would have been fulfilled in spirit and letter.

3. An unwritten contract, after its terms are fixed, is as much protected by the Constitution of the United States as one that is written with a fixed meaning.

4. An obligation to pay in Confederate currency is a lawful contract, and is protected in like manner as an obligation to pay in coin of the United States. Currency is money in the usual acceptation of the term.

Phillips *vs.* Hooker, Phil. Eq., 193, N. C.
Thornington *vs.* Smith, 8 Wall., 1.

5. During the late civil war Confederate currency was the measure of value in all contracts made in the State which were to be satisfied in money, unless some other currency was expressed in the contract.

Hence, at the close of the conflict, when this currency ceased to exist, and another one wholly different in value became the common currency, it was essential to provide rules of justice in the enforcements of contracts made during the war. The general custom of the people, during the conflict, was to make their contracts payable in the circulating currency, and was well known to the convention of October, 1865. That body was aware of the legislation of our forefathers upon the same subject, provided at the close of the Revolutionary war of 1776, to meet a similar depreciation in the value of the currency issued during that period, after its restoration in value to the standard of gold.

6. The Revolutionary States in 1783, and among them North Carolina, (see Revised Code of 1820, Ch. 189,) had set an example upon this subject which the convention of 1865 deemed it wise to follow.

Hence, by the ordinance of October 18, 1865, it was provided, "That all executory contracts, solvable in money, whether under seal or not, made after the depreci-

ation of said currency before the first day of May, 1865, and yet unfulfilled, (except official bonds and penal bonds payable to the State,) shall be deemed to have been made with the understanding that they were solvable in money of the value of the said currency; it shall be competent for either of the parties to show, by parol or other relevant testimony, what the understanding was in regard to the kind of currency in which the same are solvable; and in such case, the true understanding shall regulate the value of the contract, *Provided, that* in case the plaintiff, in any suit upon such contracts, will make an affidavit that it was solvable in other currency than that above referred to, then, such presumption shall cease, and it shall be presumed to be payable in such currency as shall be mentioned in the affidavit, subject to explanation by evidence as aforesaid." * * * * * * * * * * * * "And it shall be the duty of the General Assembly to provide a scale of depreciation of the Confederate currency from the time of its first issue to the end of the war."

The entire purpose of this ordinance, as is manifest from its language, was to ascertain what was the true contract as to the kind and value of the currency in which it was to be fulfilled, and not to effect the agreement of parties by substituting a different contract, and enlarging the intended price.

7. In pursuance of this ordinance, the General Assembly, by an act passed on the 12th of March, 1866, (Ch. 39, Sec. 1, p. 97), enacted "that the following scale of depreciation be, and the same is hereby adopted, and is established, as the measure of value of one gold dollar in Confederate currency, for each month, and the fractional parts of the month of December, one thousand eight hundred and sixty-four; from the first day of November, one thousand eight hundred and sixty one, to the first day of May, one thousand eight hundred and sixty-five, to wit:

Scale of Depreciation of Confederate Currency, the Gold Dollar Being the Unit and Measure of Value, from November 1, 1861, *to May* 1, 1865.

Months.	1861.	1862.	1863.	1864.	1865.
nuary.....	.....	$1 20	$3 00	$21 00	$50 00
ebruary	....	1 30	3 00	21 50	60 00
March	.....	1 50	4 00	23 00	60 00
April.....	.....	1 50	5 00	20 00	100 00
May.....	.....	1 50	5 50	19 00	.....
June.....	.....	1 50	6 50	18 00	.....
July.....	.....	1 50	9 00	21 00	.....
August.....	.....	1 50	14 00	23 00	.....
September.....	.....	2 00	14 00	25 00	.....
October.....	.....	2 00	14 00	26 00	....
November.....	$1 10	2 50	15 00	30 00	.....
December.....	1 15	2 50	20 00	.....	.....
Dec. 1 to 10, inclusive.....	.....	.....	.....	35 00	.....
Dec. 10 to 20, inclusive.....	.....	.....	.....	42 00	.....
Dec. 20 to 30, inclusive.....	.....	.....	.....	49 00	.....

And by another act of the same date (ch. 38, sec. 1,) it is enacted:

"That in all civil actions which may arise in courts of justice, for debts contracted during the late war, in which the nature of the obligation is not set forth, nor the value of the property for which such debts were created is stated, it shall be admissible for either party to show on trial, by affidavit or otherwise, what was the consideration of the contract, and the jury, in making up their verdict, shall take the same into consideration and determine the value of said contract in present currency in the particular lo-

cality in which it is to be performed, and render their verdict accordingly."

8. The ordinance was never intended to alter or vary the contract, or to empower the legislature to do so. Its purpose was to render admissible certain evidence which was then excluded as to sealed instruments, instead of driving parties into courts of equity for relief. Besides, in most of the cases wherein such relief was given in that court upon such grounds, the sums in controversy were too small to command its jurisdiction, limited as it was to $50 and upwards.

9. The scale of depreciation required by the ordinance, and made by the General Assembly on the 12th of March, 1866, was not intended to be a mandatory legislative enactment, but a public declaration, on the most reliable information, of what was the true value, in gold, of Confederate currency at the several periods specified during the war.

10. It differs, in this respect, from the scale of 1783, (Rev. Code of 1820, ch. 189.) The act of 1783 absolutely regulated the value of *continental* money from December, 1776, to the close of the year 1782, (S. 1, 2, and 4.) License, however, was allowed to ascertain by evidence the meaning of the contracting parties as to debts payable *in future*, (sec. 4.) In all other matters the act was mandatory, without regard to the intent of the parties. There was no Constitutional inhibition by the United States to do this. It was ever construed as mandatory. 1 Hay, 183, *Anon.*; Winslow v. Bloom, *ib.*, 217; *Ib.*, 384, *Anon.*

11. During the period of depreciation of Confederate currency all executory contracts, solvable in money of any kind, whatever may be their consideration, whether for *land* or loan of kept *money*, fell under the natural pre

sumption that they were dischargeable in Confederate currency or money of the value of that currency, unless other currency be named.

And so long as this presumption continues, or whenever it shall be established after controversy, that Confederate currency was the currency intended, the scale or some rule for ascertaining its value must be applied in order to arrive at the true value of the contract.

12. If the parties in their contract had reference to Confederate currency as the value of the consideration, the contract must be construed in the same manner as if they had especially named the currency. To hold otherwise is to *impair* the contract.

13. However inadequate the price of an article may seem to the court, when it is ascertained that the parties intended it should be solvable in money of the value of Confederate currency, that price is, nevertheless, the law of the court, because it is the law of the parties; and all relief from apparent hardship is as much forbidden as if the parties had, in their contract, estimated the values of two currencies, and allowed the obligation to be solved in the one or the other at their estimated value.

14. Since the passage of the ordinance and the act of March 12, many cases have been before the supreme court of the State; but the opinions rendered in them, it is submitted, cannot be reconciled with each other, or with the true meaning of the ordinance and act, or with the Constitution of the United States.

Thus, the cases of Robeson *vs.* Brown, 63 N. C. Rep., 554; and Maxwell *vs.* Hipp, 64 N. C. 98, assert *that the ordinance applies only to contracts when Confederate money was the consideration. In all other cases of contracts the value of the property or other consideration may be shown in evidence, and the jury must estimate such value in United States Treasury notes.*"

The cases of Dancy *vs.* Braswell, 64 N. C. 203; Williams *vs.* Rockwell, *ib.*, 325; Parker *vs.* Carson, *ib.*, 563; Brown *vs.* Trust, *ib.*, 672; it is true, do not support the rule as before laid down in the above cases, *that the ordinance applies only to contracts whenever the consideration was Confederate currency*, but seem to abandon the actual contract as intended and made by the parties, and to regulate it by recurring to the *value* of the article sold.

Such is the issue made in these cases, instead of making it, as it should be, as to the *kind* of money intended by the parties.

In the last of these cases, it is said that "the value of the contract is regulated by the act of 1866," and not by the intent of the parties.

It is submitted that such unconstitutional intent does not appear in the language of the act.

On the other hand, the cases of Sowers *vs.* Carnhart, 64 N. C., 96; Garrett *vs.* Smith, *ib.* 93; Cherry *vs.* Savage, *ib.*, 103; Green *vs.* Brown, *ib.*, 553; Howard *vs.* Beatty, *ib.*, 559; Erwin *vs.* N. C. R. R. Co., 65 N. C., 79; Houghton *vs.* Meroney, *ib.*, 124; Blackburn *vs.* Brooks, *ib.*, 413; Hilliard *vs.* Moore, *ib.*, 540; ascertain the contract and enforce it regardless of any actual value of the article; and in the last of them—an action for the hire of a slave,—it is held that "*in* 1864, *Confederate money was the currency of the country, and if there were no express agreement to the contrary the law would presume that it was solvable in such currency.*"

15. The last class of cases truly interprets the ordinance, and the legislation upon the subject; and the last cited case maintains the contract regardless of retroactive legislative interpretation.

16. But the precise question in the case before the Court has been settled by the Supreme Court of the United States, in Thorington *vs.* Smith, 8 Wall., 1.

1. In that case the Court, p. 13, speaking of Confederate notes, say, "they were the only measure of value which the people had, and their use was a matter of almost absolute necessity; and this use gave them a sort of value, insignificant and precarious enough, it is true, but always having a sufficient definite relation to gold and silver, the universal measure of value, so that it was always easy to ascertain how much gold and silver was the real equivalent of a sum expressed in this currency. We are clearly of opinion, that evidence must be received in respect to such contracts, in order that justice may be done between the parties, and that the party entitled to be paid in lawful money of the United States.

Conclusion.

We snbmit that the judgment should be reversed and a *venire de novo* awarded.

J. M. CARLISLE,
J. D. McPHERSON,
For Plaintiffs in Error.